IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 30907 of 2007(D)

IA 1144/04 in OS.402/2001 of ADDL.SUB COURT,KOLLAM

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PETITIONER:

KOSHY VAIDYAN,
VAIDYAN VILLA, PADANAYARKULANGARA THEKKUM MURI,
KARUNAGAPPALLY.

BY ADV. SRI.DILIP MOHAN

RESPONDENT:

THAHA, S/O. JAMALUDDIN KUNJU,
KADATHOOR HOUSE, MARUKANNURKULANGARA THEKKUM MURI,
KARUNAGAPPALLY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.30907 of 2007

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Dated this the 18th day of October, 2007.

JUDGMENT

This Writ Petition is filed with a prayer to set aside Ext.P1 and to consider the review petition afresh. The plaint was rejected on the ground that the balance court fee was not paid. It was a case where the defendant was set ex parte at on earlier stage and it was posted for evidence of the plaintiff. It is submitted that on 17.10.2002 the balance court fee was paid along with the chief affidavit. Therefore, the ex parte order was set aside and the matter was further proceeded with. Later the court in 2003 after the filing of the written statement and framing of issues, posted the case for payment of the balance court fee. Since there was no representation on that day, the plaint was rejected under Order 7 Rule 11 of C.P.C.

2. Grievance of the plaintiff is that he has already paid the court fee as early as in 2002 and therefore, the court should not

have rejected the plaint for non-payment of court fee under Order 7 Rule 11 of C.P.C. To complicate the matter further, the plaintiff filed application under Order 9 Rule 9 of C.P.C. When a plaint is rejected the remedies available are one to prefer an appeal and by the decisions of the court to file a review application against the order of rejection. Unfortunately, both these were not done. Further, it is seen that the parties have compromised the matter and the plaintiff has got the relief he wanted and he prays for refund of half the court fee. So virtually what remains is the prayer of the plaintiff to get the refund of the court fee when the matter is compromised under Section 69 of the Kerala Court Fees and Suits Valuation Act. Even if I review the order under Order 9 Rule 9 of C.P.C. it may not be possible for the court below to pass an order restoring the suit.

3. Therefore, I dispose of the Writ Petition with liberty to the writ petitioner to file an application for review of the judgment whereby the court has rejected the plaint under Order 7 Rule 11 of C.P.C. and the court below taking into consideration the peculiar facts and circumstances of the case consider the matter sympathetically and also condone the delay in order to

enable it to entertain the review application. If the review is allowed and the matter is restored back, there will not be any difficulty for the court to record compromise and order refund of court fee.

With this direction, the Writ Petition is disposed of.

M.N.Krishnan,
Judge.

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